

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

92

Kim Smith :
Plaintiff :Civil Action 1:01-0817
:
:Judge Caldwell
v. :
:
:Magistrate Judge Mannion
:
:
James Morgan et, al., :
Respondents :
:
:
:

FILED
SCRANTON

NOV - 5 2002

PER

DEPUTY CLERK

**MOTION TO COMPEL
DISCOVERY AND COURT ORDER**

AND NOW comes Kim Smith a lay person not lettered in legal matters and without the aid of counsel, prays a less stringent standard be applied to this pro-se pleading for a Compel and Discovery Order of the Court.

I Petitioner respectfully request this Court to order the Correctional Defendants to provide petitioner with a copy of the DOC Directive that ordered the Department of Correction to cut off power in all institutional RHU cells.

II Also an order requesting the Maintenance Department at S.C.I. Smithfield to provide petitioner a report of the status of plug sockets in RHU on H-2 and any repairs made from January 2000.

III It is also requested that this Court issue an order direction the Medical Records Department of S.C.I. Coal Township to provide Kim Smith a copy of certain medical records as evidence to support his claim and to show that medical department deferred from

medical orders from x-ray personnel to send Kim Smith to orthopedic specilist, along with other issues that are present in medical records, like the medical staff at S.C.I. Smithfeild knew their was not power in cells and failed to do anything about it to secure Kim Smith health safety and the use of the C-PaP device.

To show the failure of prison officials who did not act reasonablely in face of substantial risk to a prisoners health safety. That the prison official being sued had knowledge of such risk and yet failed to take reasonable safety measures to abate it. 114 S.CT at 1980-1984 and prison official will be held liable under 8 th amendment only if he knows of substantial risk to inmate health safety and disregards that risk by failing to take reasonable measures to abate it, Farmenr, 114 S.CT. at 1984. The reaso for requesting the D.O.C. Directive or Plicy terminating power in RHU cells is to show they knew or should have known that this act would put a person at risk who required this power for health safety reasons.

Instead that a prison official cannot be found liable under 8 th amendment for denyiong an inmate humane condition of confinement unless the official knows of and disregards an excessive risk to inmate health safety; the official must both be aware of the facts from which the inference could be drawn that a subsatantial risk of serious harm exists, and he must also draw the inference. Farmer v. Brenner 114 Sct. 1970, 1979,(1994). Despite notifying prison official of medical need , staff and institutional staff of the need for the C-PaP device and power in cells they failed to correct this condition in cells and Kim Smith was denied such heaklth care based on a false claim that he refused such which he did not. And these staff had prior knowledge of the power being cut off and the need for an inmate who required this power for health care reason.

At what point a risk of inmate health care and safety becomes sufficiently substantial for 8 th amendment purpose is a question this case presents.

Internal reports demonstrates an unreasonable risk of health safetyexisted at the facility and superintnedent had knowledge of this act and the risk presented to an inmate housed in RHU that required the use of power for health care reasons.

Wherefore petitioner prays this court will issue a court order directing the D.O.C to providepetitioner with the requested information.

Respectfully Submitted

Kim Smith

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Kim Smith :
Plaintiff :Civil Action No. 1:01-0817
v. :
:Judge Caldwell
:Magistrate Judge Mannion
:James Mrgan et al., :
Defendants :
:

VERIFICATION

I Kim Smith pro-se petitioner in this case hereby verify that the information is true and correct to the best of my knowledge and understanding and information and belief. I knowingly make this verification according to 28 U.S.C. § 1746 relating to unsworn statements.

Karen Smith

Kim Smith CT-2162

1 Kelley Dr.

Coal Township Pa. 17866-1021

5-10-02
~~4-25-02~~

PROOF OF SERVICE

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Merry

I hereby certify that I Kim Smith this 1/11 day of January, 2002 turned over to D block officer at S.C.I. Coal Township a envelope containing a motion to compel and discovery and order of the court to be mail by institution mail room to forward to the United States Postal Service to mail first class to the below listed parties, as require by rules of this court.

Mary D'Andrea

Office of the Clerk

United States District Court

Middle District of Pennsylvania

James Young Esq. *55 Utley Dr Conyngham Pa 12011*

William E. Fairall Jr. Esq.

Mr. Talaber Esq. *301 Market St, P.O. Box 1245, Hanover Pa 17108-1245*

Kim Smith